IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 102 of 1987

With

INCOME TAX REFERENCE No. 102-A of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

GUJARAT STATE FERTILIZER CO.

Appearance:

MR BB NAIK for applicant.

MR MANISH J SHAH for Respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE K.A.PUJ

Date of decision: 14/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

Income Tax Reference No. 102 of 1987 is arising out of R.A. Nos. 904 and 905/Ahd/1985 preferred by the Revenue before the Income Tax Appellate Tribunal. These two Reference Applications are, in turn, arising out of ITA Nos. 216 & 231/Ahd/82 which were filed by the assessee as well as the Department before the Income Tax Appellate Tribunal, Ahmedabad, for assessment year 1973-74. Since the present Income Tax Reference No. 102 of 1987 is arising out of two separate Reference Applications, it is ordered to be split-up in Income Tax Reference No. 102 and 102-A of 1987.

2. At the instance of the Revenue, the Income Tax Appellate Tribunal had referred the following questions for the opinion of this Court :

1. "Whether the Tribunal is right in law and on facts in upholding the claim of the assessee for investment allowance on compound walls and fencing ?"

2. "Whether the expenditure of Rs. 1,84,197/= being guest house expenses is not disallowable u/s. 37(4) of the I.T. Act, 1961 ?"

3. "Whether the assessee is entitled to the allowance of expenditure of Rs. 24,375/= in view of the decision of the Gujarat High Court in the case of M/s. Patel Bros. (106 ITR 424) and the said expenditure is not hit by the provisions of sec. 37(2B) of the I.T. Act, 1961 ?"

4. "Whether the Tribunal is right in law and on fact in holding that the assessee is entitled to depreciation on fencing at the rate applicable to plant ?"

5. "Whether the assessee is entitled to allowance of development rebate on affluent system, telephone equipment and instruments claimed for the reasons stated by the Tribunal or otherwise ?"

6. "Whether on the facts and in the circumstances of the case, the assessee

is entitled to the allowance of depreciation on lunch room, extension of canteen, partition wall ?"

3. As far as the question No.1 is concerned, it is observed by the Tribunal in Statement of Case that the assessee had claimed investment allowance on the value of compound wall, fencing, roads and culverts. The claims made by the assessee stood rejected by the Income Tax Officer and the Commissioner of Income Tax (Appeals). However, on further appeal, the Tribunal, following its decision in assessee's own case for assessment years 1977-78 to 1979-80 in ITA Nos. 696 to 698/Ahd/83 upheld the claim of the assessee in regard to the value of compound wall and fencing and directed the Income Tax Officer to allow investment allowance thereon.

4. At the time of hearing of this Reference, Mr. B.B. Naik, the learned Standing Counsel appearing for the Revenue has pointed out that the issue raised in this question is squarely covered by the decision of this Court in assessee's own case, i.e., Commissioner of Income Tax Vs. Gujarat State Fertilizer Co.Ltd., reported in 219 ITR 550, wherein it is held that buildings have been separately classified as an asset for the purpose of depreciation under Section 32 of the Act whereas buildings as such have not been included for considering the claim for development rebate under Section 33 unless the building itself can be said to be a plant. It is only the machinery or a plant that will qualify for claim under Section 33 for development rebate. A building ordinarily cannot be considered to be a plant. Roads laid within the factory are an integral part of the factory building. Culverts are parts of roads. An assessee would not be entitled to development rebate on roads, culverts and compound wall of its factory. Following this decision, it was urged by Mr. Naik that what is applicable to development rebate will equally apply to the investment allowance and hence in view of the above finding given by this Court in assessee's own case, the assessee is not entitled to investment allowance on compound walls and fencing. We are in respectful agreement with the above decision and hold that the Tribunal is not right in law and on facts in upholding the claim of the assessee investment allowance on compound walls and fencing. The question No.1 is, therefore, answered in negative, i.e., in favour of the Revenue and against the assessee.

5. As far as the question No.2 is concerned, it is

observed by the Tribunal in the Statement of Case that the assessee had claimed guest house expenses of Rs. 1,84,197/= as deduction in computing its business income. The claim stood rejected by the Income Tax Officer in view of the provisions contained in Section 37(4) of the Income Tax Act, 1961. In appeal before the CIT (Appeals), the decision was taken by him, following the decision of this Court in the case of M/s. Patel Brothers, reported in 106 ITR 424 and upheld the claim of the assessee and deleted the said disallowance. On further appeal by the Revenue before the Tribunal it was held by the Tribunal, following its decision in assessee's own case for assessment year 1971-72 in ITA No. 1856/1857(AHD)/83 that the assessee was entitled to the deduction on account of guest house expenses.

6. At the time of hearing of this Reference, our attention was drawn to the earlier decision of this Court in assessee's own case in Income Tax Reference No. 905/Ahd/85 wherein this Court has upheld the view taken by the Tribunal, following the decision in Commissioner of Income Tax Vs. Gaekwad Mills Ltd., reported in 193 ITR 734, wherein it is held that having regard to the facts and circumstances of the case, the accommodation in question maintained by the assessee was a residential accommodation in the nature of a guest house, within the meaning of clause (i) of Section 37(4). However, since the said expenditure had not been incurred for the maintenance of residential accommodation in the nature of guest house, no part thereof could be disallowed under Section 37(4)(i) of the Act. Since this Court, in earlier Reference, has followed the decision in CIT Vs. Gaekwad Mills Ltd., (Supra), we hold that the expenditure of Rs. 1,84,197/=, being guest house expenses, is not disallowable under Section 37(4) of the Act. We, therefore, answer the question No.2 in affirmative, i.e., in favour of the assessee and against the Revenue.

7. As far as the question No.3 is concerned, the Tribunal has observed in the Statement of Case, that the Income Tax Officer disallowed the claim of the assessee with regard to expenditure of Rs. 24,375/= treating the said expenditure as entertainment expenditure. In appeal, the said claim of the assessee was allowed by CIT (Appeals) following the decision of this Court in the case of M/s. Patel Brothers (Supra). The Tribunal, on further appeal, following its decision in ITA Nos. 968, 1235 & 2168 /AHD/79 dated 7-4-1982 upheld the decision of the CIT (Appeals).

8. At the time of hearing of this Reference, our

attention was drawn to the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Patel Brothers And Co.Ltd., & Others, reported in 215 ITR 165. At the time of hearing of the appeal before the Tribunal, the claim of the assessee was allowed following the decision of this Court in the case of CIT Vs. Patel Bros. & Co.Ltd. (Supra). The said decision has been affirmed by the Hon'ble Supreme Court in the above referred case. The Apex Court has held in the said decision that the expenditure incurred by assessee in providing ordinary meals to outstation customers according to established business practice, was a permissible deduction in respect of sub-section (2A) of Section 37, in the computation of total income for the purpose of payment of tax under the Act during the relevant period prior to April 1, 1976. Following this decision, we hold that the assessee is entitled to the allowance of expenditure of Rs. 24,375/= in view of the decision of this Court in the case of M/s. Patel Brothers (Supra), as affirmed by Hon'ble Supreme Court in CIT Vs. Patel Brothers & Co.Ltd. and Others, (Supra) and that the said expenditure is not hit by the provisions of Section 37(2B) of the Act. We, therefore, answer the question No.3 in affirmative, i.e., in favour of the assessee and against the Revenue.

9. As far as the question No.4 is concerned, the Tribunal has observed in the Statement of Case that the assessee claimed depreciation on fencing, roads and culverts at the rate applicable. This claim of the assessee was rejected by the I.T.O. The Tribunal, following its decision in assessee's own case for assessment year 1977-78 to 1979-80 in ITA Nos. 696 to 698/AHD/83 held that the assessee was entitled to depreciation on roads and culverts at the rate applicable to building and on fencing at the rate applicable to building.

10. At the time of hearing of this Reference, our attention was drawn to the decision of this Court in assessee's own case for earlier year, wherein this Court has taken the view that the assessee is entitled to depreciation on fencing at the rate applicable to building and not at the rate applicable to plant. We, therefore, hold that the Tribunal is right to the extent that the assessee is entitled to depreciation on fencing at the rate applicable to building. We, therefore, answer the question No.4 in the above terms accordingly.

11. As far as the question No.5 is concerned, the Tribunal has observed in the Statement of Case that the

assessee claimed development rebate on affluents system, telephonic equipment and instruments which was rejected by the ITO, but the same were allowed in appeal by CIT (Appeals). The Tribunal allowed the said claim of the assessee following its decision in assessee's own case for assessment years 1968-69 and 1969-70.

12. At the time of hearing of this Reference, it was submitted before us that as far as the assessee's claim for allowance on development rebate on affluent system is concerned, the issue is squarely covered by the decision of this Court in assessee's own case reported in 219 ITR 550, wherein it was held that an affluent discharge system for discharge of affluents which have come into existence as a result of operation of the plant must be deemed to be part of the plant. As discharge of affluents is an integral part of operation of the plant, pumps and drainage pumps are necessary adjuncts of the plant itself and therefore "plant" within the meaning of Section 33 of the Act and the cost of acquisition of new pumps and installation of drainage pipes for affluent disposal is entitled to development rebate. We, therefore, hold that the assessee is entitled to development rebate on affluent system. As far as assessee's claim regarding development rebate on telephonic equipment is concerned, our attention is drawn to the decision of this Court in assessee's own case, reported in 203 ITR 526, wherein it is held that no development rebate is to be allowed in respect of telephone equipment installed in office building after 31-3-1965. Following this decision, we hold that the assessee is not entitled to development rebate on telephone equipment.

13. As far as the assessee's claim regarding development rebate on instruments is concerned, it was submitted that these instruments were installed at the training centre for workers. This Court has taken the view in earlier year, where a medical instrument has been installed in a hospital run by the assessee for labour welfare it would be entitled to development rebate. Following this decision, we hold that the assessee is entitled to development rebate on instruments. We, therefore, answer the question No. 5 in the above terms meaning thereby the assessee is entitled to development rebate on affluent system as well as instruments. However, the assessee is not entitled to development rebate on telephone instruments.

14. As far as the question No.6 is concerned, it is observed by the Tribunal in the Statement of Case that the assessee has claimed depreciation on various items as

set out in question No.6. The said claim of the assessee was rejected by the I.T.O., which was allowed by the Tribunal following its decision in assessee's own case for assessment years 1977-78 and 1979-80. It is submitted that the decision of the Tribunal for assessment years 1977-78 and 1979-80 rests there only and it was not taken further in any Reference before this Court. It is further submitted that the claim of the assessee has to be viewed in the context of the provision made in Section 32(i)(iv) of the Act, which runs as under:

Depreciation.

"32. (1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of section 34 be allowed__

(i) xxx xxx

(ii) xxx xxx

(iii) xxx xxx

(iv) in the case of any building which has been newly erected after the 31st day of March, 1961, where the building is used solely for the purpose of residence of persons employed in the business and the income of each such person chargeable under the head "Salaries" is seven thousand five hundred rupees or less, or where the building is used solely or mainly for the welfare of such persons as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room, or lunch-room, a sum equal to twenty per cent of the actual cost of the building to the assessee in respect of the previous year of erection of the building; but any such sum shall not be deductible in determining the written down value for the purposes of clause (ii) of sub-section (1)."

The items, which are referred to in Question No.6, find place in the Section itself, and prima facie reading of

the Section itself makes it clear that the assessee is entitled to depreciation on such items. We, therefore, hold that the assessee is entitled to the allowance of depreciation on kitchen, extension of canteen and partition. We, therefore, answer the question No.6 in affirmative, i.e., in favour of the assessee and against the Revenue.

15. These References are accordingly disposed of with no order as to costs.

[R.K. Abichandani, J.]

rmr. [K.A. Puj, J.]